

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

CB Lodging, LLC, Petitioner/Appellant, v. Pottawattamie County Board of Review, Respondent/Appellee.	ORDER Docket No. 10-78-0257 Parcel No. 7444-03-351-003 Docket No. 10-78-0258 Parcel No. 7444-03-351-001
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On November 18, 2011, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant CB Lodging, LLC (CB Lodging) requested its appeal be considered without a hearing and submitted evidence in support of its petition. CB Lodging was represented by Attorney Samuel I. Kreamer of Kreamer Law Firm, PC in West Des Moines. The Pottawattamie County Board of Review was represented by Senior Assistant Pottawattamie County Attorney Leanne Gifford. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

CB Lodging, owner of commercial property located near the Mid-American Recreational Convention Complex in the southwest corner of Council Bluffs' metropolitan area, appeals from the Board of Review decisions reassessing its properties. Parcel No. 7444-03-351-003 (Lot 1) is a 1.31 acre vacant lot with an assessed value of \$400,000 for the January 1, 2010, assessment. Parcel No. 7444-03-351-0031 (Lot 2) is an 8.02 acre vacant lot with an assessed value of \$1,400,000 for the January 1, 2010, assessments. The parcels were revalued in 2010 due to the

three-year platting law requirement in Iowa Code section 441.72.¹ The 2010 assessments for Lot 1 and Lot 2 represent a 169% increase and 369% increase, respectively, between 2006 and 2010.

CB Lodging protested to the Board of Review on the ground that the properties were assessed for more than authorized by law under Iowa Code section 441.37(1)(b). It sought a reduction from the assessed value of Lot 1 to \$143,000 and Lot 2 to \$520,840. The Board of Review denied the petitions.

CB Lodging filed its appeals with this Board and urged the same ground.

Lot 1 is assessed at \$4.01 per-square foot and Lot 2 is assessed at \$6.99 per-square foot. Both were purchased as part of larger, 13.004 acre parcel for \$1.49 per-square foot in June 2006. CB Lodging argues its assessed values are excessive because of a combination of factors. First, access to the parcels was not re-routed to increase traffic count as anticipated. Second, the US economic recession resulted in declining commercial property values. Third, unemployment in the Omaha-Council Bluffs area has steadily increased since 2007. Fourth, the admission to three nearby casinos has declined since 2005. Fifth, the Mid-America Center's events have failed to develop as expected and it hosted mostly local events rather than national or regional events as planned. Lastly, the Strip Center Plaza retail area had 69.06% vacancy as of January 1, 2010.

The Board of Review submitted evidence of eight vacant land sales occurring between 2005 and 2010 and eight current vacant land listings. The sales and listings are near the Mid-American Recreational Convention Complex, in close proximity to the subject properties. Lot sizes ranged from 1.50 acres to 5.70 acres, with the exception of one 39.66 acre parcel. Sale prices range from \$306,000 to \$4,625,000; or \$2.68 per-square foot to \$12.00 per square foot. The low end of the range was the 39.66 acre sale. Excluding this sale because it appears to be a

¹ The Board of Review should be aware of amended Iowa Code section 441.72, effective January 1, 2012, for the subject properties' January 1, 2012, assessments.

sale from a financial institution and because it is so much larger than the remaining sales, the median sales price per square foot was \$7.55. The assessed values of the two subject properties (\$4.01 & \$6.99) are below the unadjusted median sale price per-square foot (\$7.55) of the comparables.

The listings provided by the Board of Review range from \$625,086 for a 3.14 acre lot to \$5,159,246 for a 29.61 acre lot. Listing prices ranged from \$4.17 to \$11.15 per-square foot. Some of the listings represented multiple parcel purchases or offerings. Because these are only listings and because they were not adjusted, the listings are suspect as representing market value.

CB Lodging did not provide additional comparable sales. Instead, it provided an analysis of the sales offered by the Board of Review. CB Lodging presented general statistics showing economic, employment, and gaming revenue decline in the Council Bluffs area. It also argues commercial real estate prices, nationwide, “are currently 43.2% below their peak in October 2007.” CB Lodging first adjusted seven of the sale prices downward 25% for time if the sale occurred before the current recession,² and then downward for superior location between 33% and 67%. Only sale six, which occurred in 2010, had a 0% net adjustment.³ The following chart summarized the sales and CB Lodging’s adjustments.

Sale	Sale Date	Sale Price	Acres	\$PSF	Time	Location	Size	Adjusted Price	Adj \$PSF
1	3/15/2007	\$476,634	2.07	\$5.29	-25%	-50%	None	\$178,700	\$1.98
2	1/4/2008	\$1,600,000	3.58	\$10.25	-25%	-67%	None	\$400,000	\$2.56
3	10/26/2007	\$700,000	2.13	\$7.55	-25%	67%	None	\$175,000	\$1.89
4	1/16/2006	\$855,576	1.64	\$12.00	-25%	67%	None	\$213,894	\$3.00
5	1/25/2008	\$600,000	1.50	\$9.18	-25%	-67%	None	\$150,000	\$2.30
6	4/27/2010	\$4,625,000	39.66	\$2.68	None	-67%	67%	\$4,625,000	\$2.68
7	4/20/2007	\$1,130,985	5.70	\$4.56	-25%	-33%	None	\$565,493	\$2.28
8	8/2/2005	\$306,000	1.57	\$4.47	-25%	-33%	None	\$153,000	\$2.23

² CB Lodging states that according to the U.S. National Bureau of Economic Research a recession began in December 2007.

³ This property was given a 67% downward adjustment for location which was offset by a 67% upward adjustment for size.

CB Lodging indicated sale six was from Mutual Omaha Bank and did not appear to be an arms-length transaction. Additionally, because there are other sales of more similarly sized parcels, sale six is not a persuasive comparable. The adjusted sales price ranged from \$1.89 per square foot to \$3.00 per square foot. But many of CB Lodging's adjustments were 75% of the sales price.

CB Lodging also submitted an analysis of the Board of Review's eight listings, as shown in the chart below.

Listing	Listing Date	Price	SF	\$PSF	Adjustment	Adjusted Price	Adj \$PSF
9	3/3/2010	\$940,896	225,792	\$4.17	-55%	\$423,403	\$1.88
10	6/17/2010	\$5,159,246	1,171,763	\$4.40	-55%	\$2,321,674	\$1.98
11	10/11/2006	\$3,064,228	274,863	\$11.15	-60%	\$1,225,691	\$2.20
12	9/21/2006	\$871,200	87,120	\$10.00	-75%	\$217,800	\$2.50
13	11/1/2007	\$2,799,165	311,018	\$9.00	-75%	\$699,791	\$2.25
14	1/17/2007	\$4,484,937	560,660	\$8.00	-75%	\$1,121,234	\$2.00
15	10/20/2009	\$625,086	136,778	\$4.57	-55%	\$281,289	\$2.06
16	9/21/2006	\$714,381	71,438	\$10.00	-75%	\$178,595	\$2.50

We conclude that sales listings may not be indicative of market value and we find this information of limited value.

While the subject parcels may not be on the major thoroughfare, the large adjustments for location seem unwarranted and unreasonable given the close proximity of the sales to the subject properties. In addition, both of the subject parcels are highly visible from the heavily traveled I-29 interstate highway. And while a time adjustment may be necessary, we do not feel the supplied data supports a uniform 25% reduction for time of sale. Because significant downward adjustments were made for time and location, we do not feel this information shows what the correct value is for the subject parcels. The Appeal Board is truly concerned the Board of Review made no attempt to adjust the comparables. If the Board of Review felt adjustments were not necessary, it should be able to explain that reasoning. But while the Board of Review

did not adjust the sales comparables, and did not explain why it felt no adjustments were necessary, it is CB Lodging's burden to show what the correct value of the property is and it has not met that burden.

Although CB Lodging's evidence shows declines in national commercial property values and economy; and declines in local/regional employment and discretionary spending, it did not provide reliable sales data to support the claim of over-assessment. Its adjustments to the Board of Review's data were excessive. We find the preponderance of the evidence fails to prove the subject properties are over-assessed as of January 1, 2010.

Conclusions of Law

The Appeal Board applied the following law in this appeal.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). But on appeal, it is a property owner or aggrieved taxpayer's burden to substantiate a claim under Iowa Code section 441.37(1). Iowa Code § 441.21(3).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Evidence of comparables sales must be adjusted to eliminate any factors that could potentially distort a sales comparison analysis. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). While the Board of Review offered unadjusted sales data, the substantial adjustments made by CB Lodging in its critique of the Board of Review's sales comparables lacked sufficient reliability to show the assessments are excessive or what the correct value of the properties should be.

We find the preponderance of the evidence does not support CB Lodging's claims of over-assessment in the January 1, 2010, assessments. We affirm the 2010 decisions of the Pottawattamie County Board of Review.

IT IS ORDERED the January 1, 2010, assessments as set by the Pottawattamie County Board of Review are affirmed.

Dated this 28 day of February, 2012.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Chair

Karen Oberman
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2-28</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>